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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DAVID AND NATASHA WIT, *et al.*,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH  
(operating as OPTUMHEALTH  
BEHAVIORAL SOLUTIONS),

Defendant.

Case No. 3:14-CV-02346-JCS  
Action Filed: May 21, 2014

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT UBH'S REQUEST FOR  
JUDICIAL NOTICE**

GARY ALEXANDER, *et al.*,

Plaintiffs,

v.

UNITED BEHAVIORAL HEALTH  
(operating as OPTUMHEALTH  
BEHAVIORAL SOLUTIONS),

Defendant.

Case No. 3:14-CV-05337-JCS  
Action Filed: December 4, 2014

1       UBH asks the Court to take “judicial notice,” pursuant to Federal Rule of Evidence 201,  
 2 of the allegations in a recently-filed complaint in another case. *See* Request for Judicial Notice  
 3 in Support of UBH’s Response to Plaintiffs’ Remedies Brief (“UBH’s Request”), *Wit* Dkt. No.  
 4 440 (Sept. 26, 2019) at 1:4-5 & Ex. A (copy of complaint filed in *Meridian Treatment Servs., et*  
 5 *al. v. United Behavioral Health*, Case No. 3:19-cv-05721). The Court should reject UBH’s  
 6 request, for at least three reasons.

7       First, the allegations in the *Meridian* complaint are not judicially noticeable facts under  
 8 Federal Rule of Evidence 201. The Rule states that “[t]he court may judicially notice a fact that  
 9 is not subject to reasonable dispute because it (1) is generally known within the trial court’s  
 10 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose  
 11 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. But the *Meridian* allegations are  
 12 just that: unproven allegations in a newly-filed complaint. UBH has not even answered the  
 13 complaint yet, and, tellingly, reserves the right to *deny* all of the allegations—including the very  
 14 allegations about the existence, scope, and/or validity of provider assignments UBH asks the  
 15 Court to “notice” here. UBH’s Req. at 1:22-24. The *Meridian* allegations are clearly “subject to  
 16 reasonable dispute,” are not “generally known,” and do not come from “sources whose accuracy  
 17 cannot reasonably be questioned.” Fed. R. Evid. 201. Rule 201, therefore, is patently  
 18 inapplicable and UBH’s request for “judicial notice” of the allegations is nothing short of  
 19 frivolous.

20       Second, UBH’s “request for judicial notice” is a procedurally improper attempt to file a  
 21 surreply on remedies without seeking leave to do so. In its opposition to Plaintiffs’ remedies  
 22 brief, UBH argued that the potential existence of provider assignments precluded the Court from  
 23 ordering a reprocessing remedy. *See* United Behavioral Health’s Resp. to Pls.’ Remedies Br.,  
 24 *Wit* Dkt. No. 428-4 (June 14, 2019) at 24:19-25:8. In reply, Plaintiffs explained that UBH’s  
 25 argument was meritless because, among other reasons, there is *no evidence* anywhere in the  
 26 record in this case that any class member assigned away all of his or her ERISA rights, including  
 27 the right to sue UBH for breaching its fiduciary duties—to the contrary, the only relevant  
 28

1 evidence in the record suggests that the class members' plans *preclude* assignments.<sup>1</sup> Pls.' Reply  
 2 in Supp. of their Req. for Remedies, *Wit* Dkt. No. 434-4 (July 10, 2019) at 27:11-28:16. UBH's  
 3 "request for judicial notice" of allegations relating to provider assignments is plainly an attempt  
 4 to have the last word on this issue, without seeking leave of Court as UBH was required to do.  
 5 *See* Civil Local R. 7-3(d) ("Once a reply is filed, no additional memoranda, papers or letters may  
 6 be filed without prior Court approval . . .").

7 Third, even if the Court were to "notice" the *Meridian* complaint—which it should not—  
 8 those allegations do not support UBH's argument that provider assignments somehow preclude  
 9 relief in this case. The provider plaintiffs in *Meridian* do not come close to alleging that they  
 10 have obtained all of their patients' ERISA rights. Instead, they merely allege that their  
 11 assignments "entitle them to direct payment of claims by UBH." UBH's Req. at Ex. A  
 12 (*Meridian* Compl.) ¶ 2; *see also id.* ¶ 17 (assignments enabled providers "to seek payment  
 13 directly from UBH for treatment services"); ¶ 122 (Meridian patients "assign[ed] their rights to  
 14 insurance payment to Meridian"); ¶ 134 (same as to Serenity patients); ¶ 147 (same as to  
 15 Harmony patients). As the Court—and UBH—well know, Plaintiffs do not seek an award of  
 16 benefits in this case. And as the Ninth Circuit has held, even an assignment of the right to  
 17 receive direct payment *is not sufficient* to assign a claim for breach of fiduciary duty or any other  
 18 ERISA claims. *See, e.g., Spinedex Physical Therapy USA Inc. v. United Healthcare of Ariz., Inc.*, 770 F.3d 1282, 1293-94 (9th Cir. 2014) (finding that patients who assigned "the right to  
 19 seek payment of benefits directly from their Plans" did not also assign "their claims for breach of  
 20 fiduciary duty"); *DB Healthcare, LLC v. Blue Cross Blue Shield of Ariz., Inc.*, 852 F.3d 868, 877  
 21 (9th Cir. 2017) (holding that assignment of right to payment of benefits "does not encompass . . .  
 22 claims for declaratory and injunctive relief . . . or for breach of fiduciary duty"). Thus, *even if*  
 23 the Court were to take all of the allegations in *Meridian* as true (which it should not), and also  
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25  
 26 <sup>1</sup> To the extent UBH's Request is a belated attempt to present evidence of such purported  
 27 assignments, the Court should reject it. UBH had the opportunity at trial to offer evidence of any  
 28 relevant assignments, but did not do so. Any attempt to supplement the record at this point is two  
 years too late. More to the point, however, the untested allegations in the *Meridian* complaint are  
 simply *not evidence* and the Court should not treat them as such.

1 were to consider the assignment allegations as substantive evidence in this case (which they are  
 2 not), those “judicially noticed facts” still would not provide any justification for denying the  
 3 classes a reprocessing remedy, or any of the other remedies they have requested, for UBH’s  
 4 proven breaches of fiduciary duty and other ERISA violations. The *Meridian* complaint does not  
 5 change the fact that UBH has never come forward with evidence suggesting that any class  
 6 member, let alone a substantial number of them, have completely divested themselves of the  
 7 ERISA claims asserted in this case.

8 Put simply, the *Meridian* case is completely irrelevant to any of the issues presently  
 9 before the Court. The *Meridian* plaintiffs do not assert any claims under ERISA, instead raising  
 10 a variety of claims under California law sounding in fraud, breach of contract and unfair business  
 11 practices. Moreover, the *Meridian* complaint expressly *excludes* any legal claims relating to the  
 12 benefit determinations that would be subject to reprocessing in this case. UBH’s Req. at Ex. A  
 13 (*Meridian* Compl.) ¶ 45 (“Plaintiffs, with this Complaint, are not pursuing legal claims with  
 14 respect to any specific UBH benefit determinations challenged by individual members of the  
 15 certified classes in *Wit* or *Alexander* above . . .”).

16 Because the allegations in *Meridian* are not proven facts; do not meet the requirements of  
 17 Federal Rule of Evidence 201; and, even if true, would not have any bearing on what remedy is  
 18 appropriate in this case, or any other pertinent issue, the Court should reject UBH’s request for  
 19 judicial notice of the *Meridian* complaint.

20  
 21 Dated: October 1, 2019

ZUCKERMAN SPAEDER LLP

22 /s/ Caroline E. Reynolds  
 23 Caroline E. Reynolds

24 PSYCH-APPEAL, INC.  
 25 Meiram Bendat

26 *Attorneys for Class Plaintiffs*